IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

CRP.No. 726 of 2005

AGAINST THE ORDER DATED 04/03/2005 IN EA 1387/03 IN EP 418/00 IN OS.295/1992 OF I ADDITIONAL SUB COURT, KOZHIKODE

REVN. PETITIONER: PETITIONER:RESPONDENT:DEFENDANT:

K. SREENIVASAN, AGED 60 YEARS,
S/O. KUTTAPPAN, AGRICULTURIST, RESIDING AT
KOZHIPURATH, KALATHINKUNNU AMSOM, DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT: RESPONDENT: PETITIONER:PLAINTIFF:

A. NARAYANAN NAIR, S/O. UNNICHIRA AMMA,
KILATHIYIL MEETHAL HOUSE, P.O. NADERI, QUILANDY.

BY ADV. SRI.AVM.SALAHUDIN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

I.A.NO.2025/2005 IN C.R.P.NO.726/2005

DISMISSED

15/11/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

C.R.P. NO. 726 OF 2005

Dated this the 15th day of November, 2007

O R D E R

The petitioner is the judgment debtor in O.S.No.295 of 1992, on the file of the Court of the Subordinate Judge of Kozhikode. In execution of the money decree against him, the immovable property belonging to him was sought to be sold in E.P.No.418 of 2000. The property was sold on 27.8.2003. The petitioner filed E.A.No.1387 of 2003 under Order XXI Rule 90 of the Code of Civil Procedure. The application was posted to 1.3.2005. On that date, the counsel appearing for the petitioner was absent and the court below posted the case to 4.3.2005 for orders. On 2.3.2005, an application was filed by the petitioner to re-open the case and to hear the revision petitioner. It is submitted that the said application, dated 2.3.2005, was posted for counter to 19.3.2005.

2. Meanwhile, the court below dismissed E.A.No.1387 of 2003 on 4.3.2005, by the order impugned in this Revision. Before the court below, the petitioner was absent on 1.3.2005 and there was no representation. The court below was justified in posting the case to 4.3.2005 for orders. But on 2.3.2005, the petitioner had filed an application to hear him before passing orders. The court below posted that application to 19.3.2005. But, before hearing that application, the main application, namely,

E.A.No.1387 of 2003, was dismissed on 4.3.2005. Then why the application, dated 2.3.2005, was posted to 19.3.2005? The petitioner is justified in contending that the court below committed an error in dismissing E.A.No.1387 of 2003. The impugned order is, therefore, set aside and the executing court is directed to consider and dispose of E.A.No.1387 of 2003 on the merits.

The Civil Revision Petition is allowed as above.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 726 OF 2005

O R D E R

15th November, 2007